

Federal Communications Commission

DA 01-271

2001 FEB -5 P 3:17 Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

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Amendment of Section 73.202(b),

Table of Allotments,

FM Broadcast Stations.

(Huntsville, La Porte, Nacogdoches

and Willis, Texas, and Lake Charles

Louisiana)

MM Docket No. 01-31

RM-10035

NOTICE OF PROPOSED RULE MAKING

Adopted: January 24, 2001

Released: February 2, 2001

Comment Date: March 26, 2001

Reply Date: April 10, 2001

By the Chief, Allocations Branch

1. Before the Commission for consideration is a Petition for Rule Making filed by New Wavo Communication Group, Inc. ("New Wavo"), proposing the substitution of Channel 279C for Channel 279C3 at Willis, Texas, reallocation of Channel 279C from Willis, Texas, to La Porte, Texas, and the modification of the license for Station KVST(FM), accordingly. To accommodate its proposal for Station KVST(FM), New Wavo also requests changes at Huntsville and Nacogdoches, Texas, and Lake Charles, Louisiana. New Wavo stated its intention to apply for Channel 279C at La Porte if its proposal is granted.

2. New Wavo filed its request pursuant to Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Modification of FM and TV Authorizations to Specify a New Community of License ("Change of Community R&O") 4 FCC Rcd 4870 (1989), recon. granted in part ("Change of Community MO&O"), 5 FCC Rcd 7094 (1990). New Wavo points out that the Commission has stated that in order to grant a change in community of license, the proposed channel must be mutually exclusive with its current use, the existing community of license must retain local service, and the proposed arrangement of allotments should be preferred over the existing arrangement under the Commission's allotment priorities. Therefore, in support of its proposal, New Wavo states that the proposed use of Channel 279C at La Porte is mutually exclusive with the current use of Channel 279C3 at Willis. New Wavo further states that although station KVST(FM) is the only broadcast service at Willis, Willis will not be deprived of local service since New Wavo proposes to reallocate co-owned Station KUST (on Channel 259A) from Huntsville, Texas to Willis, Texas. New Wavo also states that the new

community of La Porte (population 27,910) will obtain a first local service (priority 3) while Willis (population 2,764) will continue to receive local service from Station KUST (priority 3). New Wavo states that La Porte is located just inside the Houston Urbanized Area in Harris County approximately 36 kilometers from Houston and that the 70 dBu contour of the proposed facility will provide a signal to 17 percent of the Houston Urbanized Area. According to New Wavo, the change in site location and upgrade in class for Station KVST(FM) will result in a net gain in population of 2,612,021 people in an area of 21,860 square kilometers within the 60 dBu contour. Further, most of the present coverage area will continue to receive at least five aural services while 15,510 people will receive four services and 902 people will be left with three services but no underserved areas will be created citing Anniston, Alabama, et al., MM Docket No. 98-112, 15 FCC Rcd 9971 (2000). New Wavo continues, stating that La Porte is independent of the Houston urbanized Area, providing a showing in accordance with Faye and Richard Tuck, 3 FCC Rcd 5374, 5378 (1988).¹

3. We believe New Wavo's proposal warrants consideration since the allotment of Channel 279C at La Porte could provide the larger community with its first local service under our allotment priorities.² While the reallocation will result in removal of the sole local service at Willis, New Wavo is also requesting the reallocation of Station KUST, Channel 259C3 from Huntsville, Texas, to Willis, Texas, as a first local service on Channel 259A, committing to operate the station in Willis. We believe

¹ New Wavo submitted the following information demonstrating that La Porte is an independent community from the Houston Urbanized Area. 1) There are sufficient employment opportunities in La Porte for its residents. Over 27 percent of the population over sixteen work in the community according to the latest census data. 2) La Porte has its own newspaper, the Bayshore Sun, which is published twice per week. In addition, the city has its own cable television system which is operated by Time Warner pursuant to a franchise agreement. The City of La Porte operates a web site as does the La Porte-Bayshore Chamber of Commerce, providing information for the community. 3) The residents of La Porte consider La Porte to be separate from Houston. The City of La Porte was incorporated in 1892. There is a heritage Society that has restored numerous landmarks, provides information on local history and guides for historic walking tours of the city. Overall, La Porte's distinct history and size of population and its wide range of businesses strongly suggest that La Porte has an identity that is independent from its larger neighbor. 4) La Porte is governed by a mayor, eight city council members and a city manager. In addition, the city has its own Public Works, Parks and Recreation, Finance and Planning Departments, and operates its own Municipal Court. 5) La Porte has two zip codes associated exclusively with the community (77571 and 77572). 6) La Porte has numerous commercial establishments, health facilities and transportation facilities, many of which incorporate La Porte in their names. The La Porte Auto Sales, La Porte Bayshore Garden Club, La Porte Family Cleaners, La Porte Hardware and La Porte Petroleum, to name a few. The nearest hospital is in Bayshore but there are a number of medical offices in La Porte. La Porte has its own municipal airport and is served by the Union Pacific Railroad as well as the Bay Area Transportation Partnership which provides van service for the community. 7) businesses interested in advertising to the residents of La Porte can do so through the Bayshore Sun newspaper, the local cable company and the La Porte-Bayshore Chamber of Commerce. 8) La Porte provides its own municipal services such as police and fire services, maintaining its own parks and recreation departments, trash collection, and public works department for street repairs. La Porte has its own school district serving 7,392 students during the 1997-98 school year and operates its own library.

² The FM allotment priorities are: (1) First full-time aural services; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters [Co-equal weight given to priorities (2) and (3)]. See Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982).

that New Wavo has provided sufficient information to show that La Porte is an independent community from the Houston urbanized Area. As New Wavo is proposing to change the authorized transmitter site for Station KVST(FM), gain and loss information was provided. A staff engineering analysis confirms that there would be both a gain and loss of service. The staff analysis indicates that 606 people in 231 square kilometers would receive four services, 123 people in 116 square kilometers would receive three services, and 58 people in 16 square kilometers would receive two services. Our engineering analysis indicates that Channel 279C can be allotted to La Porte at New Wavo's specified site in compliance with the Commission's spacing requirements provided additional substitutions are made.³

4. To accommodate the allotment at La Porte, New Wavo proposes the substitution of Channel 277C2 for Channel 279C1 at Lake Charles, Louisiana, and modification of the license for Station KBIU accordingly. The licensee for Station KBIU has consented to the change in channel, class and transmitter site and New Wavo has entered into a reimbursement agreement with Station KBIU. Channel 277C2 can be allotted to Lake Charles consistent with the Commission's spacing requirements.⁴

5. To accommodate the substitution at Lake Charles, New Wavo has proposed the substitution of Channel 277C2 for Channel 277C1 at Nacogdoches, Texas, and modification of the license for Station KJCS accordingly. New Wavo has entered into a reimbursement agreement with the licensee of Station KJCS for the reasonable expenses in changing its class of channel. A staff analysis confirms that Channel 277C2 can be allotted to Nacogdoches in compliance with the Commission's spacing requirements.⁵

6. To further accommodate the reallocation of Station KVST(FM) from Willis to La Porte, New Wavo proposes to have its co-owned Station KUST, Huntsville, Texas, on Channel 259C3 reallocated to Willis, Texas, as a Class A station at a new transmitter site to provide local service to Willis. New Wavo contends that the proposal for Station KUST meets the Commission's policies as set forth in Community of License as the use of Channel 259A at Willis conflicts with Channel 259C3 at Huntsville, and the reallocation will enable Willis to retain a first local service under priority 3) over a sixth local service at Huntsville which falls under priority 4). New Wavo further states that Willis is not located in an urbanized area and that it will file an application for Channel 259A and construct the station at Willis. According to New Wavo, despite the downgrade, there will be a gain of service to 11,510 people in an area of 2,286 square kilometers. A staff analysis confirms that Channel 259A can be allotted to Willis in compliance with the Commission's spacing requirements.⁶ In accordance with

³ The coordinates for Channel 279C at La Porte are 29-58-19 and 94-31-16.

⁴ The coordinates for Channel 277C2 at Lake Charles are 30-12-12 and 93-26-19.

⁵ The coordinates for Channel 277C2 at Nacogdoches are 31-25-59 and 94-49-03.

Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 259A at Willis. Additionally, in order to insure continued service to Willis, we will condition the reallocation of Channel 279C from Willis to La Porte on the activation of Channel 259A at Willis.

7. In view of the above, the Commission solicits comments on the proposal to reallocate Channel 279C to La Porte, Texas, and modify the license of Station KVST(FM) accordingly, substitute Channel 277C2 for Channel 279C1, Lake Charles, Louisiana, and modify the license for Station KBIU accordingly, substitute Channel 277C2 for Channel 277C1, Nacogdoches, Texas, and modify the license for Station KJCS, and substitute Channel 259A for Channel 259C3 at Huntsville, Texas, and reallocate the channel to Willis, Texas, and modify the license for Station KUST, accordingly. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Huntsville, La Porte, Nacogdoches and Willis, Texas, and Lake Charles, Louisiana, as follows:

Community	Channel No.	
	Present	Proposed
Lake Charles, Louisiana	241C, 258C1, 279C1, 287C2	241C, 258C1, 277C2, 287C2
Huntsville, Texas	259C3, 269A	269A
Nacogdoches, Texas	221A, 277C1	221A, 277C2
Willis, Texas	279C3	259A
La Porte, Texas	-----	279C

8. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send by Certified Mail, Return Receipt Requested, a copy of this Notice of Proposed Rule Making to the following:

Cumulus Licensing, Inc.
Station KBIU
111 East Kilbourn Avenue
Milwaukee, Wisconsin 53202

Radio Licensing, Inc.
Station KJCS
910 North Street
Nacogdoches, Texas 75961

⁶ The coordinates for Channel 259a at Willis are 30-32-37 and 95-28-32.

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before March 26, 2001, and reply comments on or before April 10, 2001, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D. C., 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

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11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the

proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be

considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

**John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.)

Comments should be filed with the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-A325, Washington, D. C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 445 Twelfth Street, S.W., Washington, D. C.